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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
| 10/646,958 | 08/21/2003 | Carey W. Smith | 42P16159 | 3005 |
| 8791 | 7590 | 04/19/2007 | EXAMINER | |
| BLAKELY SOKOLOFF TAYLOR & ZAFMAN 12400 WILSHIRE BOULEVARD SEVENTH FLOOR LOS ANGELES, CA 90025-1030 | | | CHO, HONG SOL | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 2616 | |

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|--|------------|---------------|
| SHORTENED STATUTORY PERIOD OF RESPONSE | MAIL DATE | DELIVERY MODE |
| 3 MONTHS | 04/19/2007 | PAPER |

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

| | | | |
|------------------------------|----------------------|------------------|--|
| Office Action Summary | Application No. | Applicant(s) | |
| | 10/646,958 | SMITH, CAREY W. | |
| | Examiner Hong Cho | Art Unit 2616 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on _____.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-25 is/are pending in the application.
 - 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-25 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 21 August 2003 is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) Notice of Informal Patent Application
- 6) Other: _____.

DETAILED ACTION

Drawings

1. Drawings 1-3 are objected to because drawings are not provided with descriptive text labels. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 101

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

3. Claims 1-7 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter since they disclose abstract idea without providing useful or tangible result.

Claim Rejections - 35 USC § 112, First paragraph

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. Claims 8-14 are rejected under 35 U.S.C. 112, first paragraph, as a single means claim.

Re claim 8, it is subject to an undue breadth rejection under 35 U.S.C. 112, first paragraph since it claims one circuitry with no additional means as claim limitation. See MPEP 2164.08(a).

Claims 9-14 depend on claim 8 are similarly rejected.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102(b) that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1-25 are rejected under 35 U.S.C. 102(b) as being anticipated by Araujo et al (US 6108350), hereinafter referred to as Araujo.

Re claims 1, 8, 15, 22 and 25, Araujo discloses a central office (*a second node*, figure 1a, element 130) negotiating with customer premises equipment including an ADSL modem (*a first node*, figure 1, element 110) to use a cell-based protocol (*determining, at least in part at a first node, at least one communication protocol via which a second node is capable of communicating with the first node, the determining being based at least in part upon at least one parameter received from the second node during an initialization of communication between the first node and the second node, the at least one parameter specifying, at least in part, the at least one communication protocol*, column 5, lines 30-40).

Re claim 22, Araujo discloses customer premises equipment with a PC to accommodate protocol stacks (*a first node comprising circuitry that includes a circuit*

card and a circuit board that includes a circuit card slot that is capable of coupling the circuit card to the circuit board) and a central office.

Re claims 2, 9 and 16, Araujo discloses selecting a protocol stack for providing a cell-based protocol (*selecting, at least in part at the first node, one or more drivers capable of implementing, at least in part, the at least one communication protocol*, figure 1a, element 113).

Re claims 3, 10 and 17, Araujo discloses a protocol stack comprising an ADSL layer (*channel framing driver*, figure 1a, element 118) implementing ATM layer utilizing ATM protocol (*framing protocol*, figure 1a, element 117) (*the one or more drivers comprise at least one channel framing driver that is capable of implementing, at least in part, at least one framing protocol that is compatible with at least one of an Ethernet protocol and an ATM protocol*, column 5, lines 49-58).

Re claims 4, 11 and 18, Araujo discloses selecting a cell-based protocol stack by customer premises equipment for efficient transmission (*in response at least in part to the selecting, invoking a plug and play (PnP) protocol manager to initiate loading, at least in part, of the one or more drivers into memory*, column 6, lines 51-57).

Re claims 5, 12 and 19, Araujo discloses ATM protocol over ADSL protocol (*the one or more drivers implementing at least one encapsulation protocol that is compatible with an Asynchronous Transfer Mode (ATM) protocol and an Ethernet protocol*, column 5, lines 51-53).

Re claims 6, 13 and 20, Araujo discloses customer premises equipment with an ADSL modem driver to be utilized for selection protocol stack (*the first node comprises*

at least one modem driver and the determining is performed, at least in part, by the at least one modem driver, figure 1a, element 118).

Re claims 7, 14 and 21, Araujo discloses a central office negotiating with customer premises equipment to use a cell-based protocol (*Initialization of the communication comprises a negotiation between the first node and the second node; and in response at least in part to a request from the first node, the second node transmits during the negotiation the at least one parameter to the first node*, column 5, lines 30-40).

Re claims 23 and 24, Araujo implicitly discloses a PC with a circuit board comprising a bus and a host processor coupled to the bus; and when the circuit card with a DSL modem is coupled to the slot, the circuitry is coupled to the bus.

Conclusion

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hong Cho whose telephone number is 571-272-3087. The examiner can normally be reached on Mon-Fri during 7 am to 4 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Seema Rao can be reached on 571-272-3174. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Seema S. Rao
SEEMA S. RAO 4/16/07
SUPERVISORY PATENT EXAMINER
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hc
Hong Cho
Patent Examiner
4/16/07